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BEFORE THE ARIZONA CORPORATION COMMISSION

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JEFF HATCH-MILLER, Chairman  
WILLIAM A. MUNDELL  
MARC SPITZER  
MIKE GLEASON  
KRISTIN K. MAYES

AZ CORP COMMISSION  
DOCUMENT CONTROL

AVIS READ; individually, and on Behalf of All  
Others Similarly Situated,

DOCKET NO. E-01345A-04-0657

Complainants,

Arizona Corporation Commission

**DOCKETED**

v.

APR 20 2005

ARIZONA PUBLIC SERVICE COMPANY,

Respondent.

DOCKETED BY	<i>KD</i>
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IN THE MATTER OF THE APPLICATION OF  
ARIZONA PUBLIC SERVICE COMPANY FOR A  
DECLARATORY ORDER REGARDING BILL  
ESTIMATION PROCEDURES.

DOCKET NO. E-01345A-03-0775

**COMPLAINANT'S SUBMISSION**  
**REGARDING ATTORNEYS' TIME AND EXPENSES**

Pursuant to Commissioner William A. Mundell's request at the hearing on the Settlement Agreement held on April 7, 2005, Complainant submits this brief regarding the time and expenses that Complainant's counsel ("Read Counsel") have incurred in connection with the Maricopa County Superior Court proceeding and the above-referenced Arizona Corporation Commission proceedings.

**I. INTRODUCTION**

As the Commission is aware, this matter was first filed in the Maricopa County Superior Court on June 4, 2002 as a class action lawsuit ("Litigation") filed on behalf of APS customers seeking relief from illegal APS billing and metering practices. While supported by several legal theories, the basis of the Litigation was that APS had been knowingly and systematically billing APS customers for electricity that its customers have not used and that

1 such bills were rendered and collected based on procedures and methodologies that were  
2 unlawful, unapproved and violated APS's obligations, as a regulated public service company,  
3 to the citizens of Arizona.

4 This Commission was officially introduced to the Litigation when APS filed an  
5 Application for a Declaratory Order Regarding Bill Estimation Procedures on October 22,  
6 2003. After Maricopa County Superior Court Judge Rebecca Albrecht issued her Order  
7 granting APS's Motion to Dismiss on August 19, 2004, essentially referring the matter to the  
8 Commission, Complainant brought her Complaint against APS before the Commission, re-  
9 stating her challenge to APS' unlawful estimating procedures.

10 As documented in Commission reports, filings and hearing testimony, the work of Read  
11 Counsel has contributed significantly to the Commission's investigation into APS's billing  
12 practices by, among other things, providing valuable analysis and information to the  
13 Commission. The Read Counsel believe that their action against APS was instrumental in  
14 bringing these matters before the Commission, leading to the Proposed Settlement.

15 As the following will demonstrate, Read Counsel has expended a great deal of actual  
16 time and out-of-pocket expenses in connection with the above-captioned matters and the prior  
17 Litigation that made the resolution of these matters possible.

## 18 **II. READ COUNSEL'S ACTUAL TIME AND EXPENSES**

19 To date, the total billable time and out-of-pocket expenses that Read Counsel have  
20 devoted to this matter, whether in the Maricopa County Superior Court or the ACC, exceeds  
21 \$590,000.00 in attorneys' fees (approx. 2,413 hours) and \$23,000.00 in expenses. See,  
22 Exhibit A – Summary of Read Counsel Attorneys' Fees. The following chart shows the  
23 billable time and expenses of each firm that has worked on these matters:

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<b>Firm</b>	<b>Billable Time</b>	<b>Expenses<sup>1</sup></b>
Zimmerman Reed, P.L.L.P.	\$256,777.50	\$19,307.05
The Rubin Law Firm PLC	\$55,998.00	\$466.45
The Law Offices of Jeffrey M. Proper	\$24,262.50	\$0.00
Jerald Bien-Willner, Esq.	\$222,132.50	\$0.00
Laura Bien-Willner, Esq.	\$30,900.00	\$3,600.00
<b>Total</b>	<b>\$590,070.50</b>	<b>\$23,373.50</b>

This time was devoted to a number of matters which culminated with the Settlement Agreement that is now before this Commission, including extensive motion practice and briefing.

Read Counsel also conducted extensive discovery prior to the Complaint filed before the Commission. They served requests for production of documents and requests for admissions upon APS. They also received and reviewed more than 10,000 pages of documents produced by APS and reviewed thousands of additional pages of APS documents that were not selected for copying. Read Counsel also deposed six APS employees – Janet Smith, Cynthia Janka, Janna Van Ness, Doug Winckler, Alan Propper and Jan Bennett.

Further, Read Counsel retained and worked with an expert (Dr. Mark S. Shirilau, P.E., President and Chief Executive Officer of Aloha Systems, Inc., an energy industry consulting and evaluation firm) to assist them in assessing the accuracy of APS's estimating procedures and what effect the load factor would have on the estimating formulae used by APS.

Throughout the Litigation and the ACC proceedings, Read Counsel were diligent in performing only those tasks that were deemed necessary and prudent to perform and sought to avoid performing any duplicative and unnecessary tasks. Although much of the work was performed by the law firm of Zimmerman Reed, Read Counsel attempted to make work assignments in a coordinated fashion. More senior attorneys were not called to perform tasks

<sup>1</sup> These expenses were for items such as filing fees, expert fees, photocopying charges, scanning charges, LexisNexis and Westlaw research, postage, courier fees, long distance phone charges, and travel expenses.

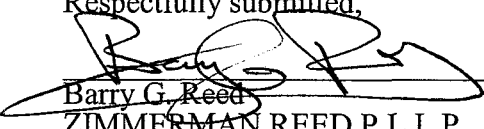
1 when more junior lawyers could perform them. Likewise, when tasks could be performed by  
2 paralegals and legal assistants, care was taken to utilize them instead of attorneys.

3 **III. CONCLUSION**

4 As the forgoing has demonstrated, Read Counsel has expended a great deal of actual  
5 time and out-of-pocket expenses in connection with the above-captioned matters and the prior  
6 Litigation, all of which have led to the successful resolution of this dispute and the multi-  
7 million dollar benefit to APS customers.

8  
9 DATED: April 18, 2005

Respectfully submitted,

  
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22 **AVIS READ and the Class**  
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27  
28

1 The ORIGINAL and FIFTEEN (15) copies  
2 of the foregoing were filed by U.S. Mail  
this 18<sup>th</sup> day of April 2005, with:

3 Docket Control  
4 ARIZONA CORPORATION COMMISSION  
1200 West Washington  
5 Phoenix, AZ 85007-2996

6 Copies of the foregoing were served by mailed  
7 this 18<sup>th</sup> day of April 2005, to:

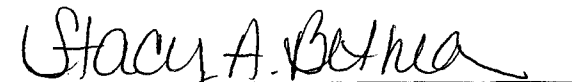
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24   
25 Stacy A. Bethea

## Exhibit A – Summary of Read Counsel Attorneys' Fees

### Zimmerman Reed, PLLP

Timekeeper	Rate	Hours Worked	Total Fees
Barry G. Reed	\$450.00	476.75	\$214,537.50
Gregory P. Sautter	\$250.00	0.75	\$187.50
Julie L. Tinkam	\$125.00	3.50	\$437.50
Charlotte L. Haught	\$125.00	8.10	\$1,012.50
Stacy A. Bethea	\$125.00	313.40	\$39,175.00
David M. Ciakowski	\$250.00	0.50	\$125.00
Anne T. Regan	\$200.00	1.50	\$300.00
Allyson J. Teply	\$110.00	9.00	\$990.00
Daniel C. Ray	\$125.00	0.10	\$12.50
<b>Totals</b>		<b>770.15</b>	<b>\$256,777.50</b>

### The Rubin Law Firm

Timekeeper	Rate	Hours Worked	Total Fees
David A. Rubin	\$200.00/\$210.00 <sup>1</sup>	248.4	\$50,177.00
John O'Neal	\$170.00	1.3	\$221.00
Sharon S. McNeely	\$70.00	48.00	\$3,360.00
Lori M. Gallagher	\$70.00	32.00	\$2,240.00
<b>Totals</b>		<b>329.70</b>	<b>\$55,998.00</b>

### The Law Offices of Jeffrey M. Proper

Timekeeper	Rate	Hours Worked	Total Fees
Jeff M. Proper	\$225.00/\$250.00 <sup>2</sup>	100.70	\$24,262.50
<b>Totals</b>		<b>100.70</b>	<b>\$24,262.50</b>

### Other Attorneys

Timekeeper	Rate	Hours Worked	Total Fees
Jerald Bien-Willner	\$200/\$215/\$225 <sup>3</sup>	1,058.00	\$222,132.50
Laura Bien-Willner	\$200.00	154.50	\$30,900.00
<b>Totals</b>		<b>1,212.50</b>	<b>\$253,032.50</b>

### Recap of Read Counsel Hours & Fees

Firm	Hours Worked	Total Fees
Zimmerman Reed P.L.L.P.	770.15	\$256,777.50
The Rubin Law Firm	329.70	\$55,998.00
The Law Offices of Jeffrey M. Proper	100.70	\$24,262.50
Other Attorneys	1,212.50	\$253,032.50
<b>Totals</b>	<b>2413.05</b>	<b>\$590,070.50</b>

<sup>1</sup> The Rubin Law Firm instituted a rate increase effective November 1, 2004.

<sup>2</sup> The Law Offices of Jeffrey M. Proper instituted a rate increase effective January 1, 2003.

<sup>3</sup> Mr. Bien-Willner's rate reflects his annual rate increases.